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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.      | CONFIRMATION NO. |
|--|-------------|----------------------|--------------------------|------------------|
| 10/578,059   | 06/11/2007  | Michael J. Elder     | 09086-00234-US           | 4770             |
| 34872  | 7590        | 04/18/2008           |                          |                  |
| Basell USA Inc.<br>Delaware Corporate Center II<br>2 Righter Parkway, Suite #300<br>Wilmington, DE 19803 |             |                      | EXAMINER<br>LU, C CAIXIA |                  |
|  |             |                      | ART UNIT                 | PAPER NUMBER     |
|  |             |                      | 1796                     |                  |
|  |             |                      | MAIL DATE                | DELIVERY MODE    |
|  |             |                      | 04/18/2008               | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                     |  |
|------------------------------|--------------------------------------|-------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/578,059 | <b>Applicant(s)</b><br>ELDER ET AL. |  |
|                              | <b>Examiner</b><br>Caixia Lu         | <b>Art Unit</b><br>1796             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-16 is/are pending in the application.
- 4a) Of the above claim(s) 1-4,7,9,10 and 13-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5,6,11 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/2/06</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION*****Election/Restrictions***

1. Applicant's election with traverse of Group III wherein the elected catalyst species is dimethylsilylbis(2-methyl-8-phenyl-benzo[b]cyclopenta[d]theny-3-yl) zirconium dichloride, claims 5, 6, 11, and 12, in the reply filed on February 19, 2008 is acknowledged. The traversal is on the ground(s) that detailed analysis is not provided regarding how the common feature of the catalyst composition is rendered obvious over the "X" references disclosed in the International Search Report. This is not found persuasive because detailed analysis is not required in the restriction requirement.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 5, 6, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulte et al. (WO 03/106470 A1, and its family US 2005/0182266 is referred to hereinafter for convenience).

Schulte disclose a catalyst composition comprising a C<sub>1</sub> and C<sub>2</sub>-symmetric metallocene complexes represented by formula (I) ([0010] and [0015]). When the T group containing ligand is represented by the substituted cyclopenta[2,3-

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b]thiophene-6-yl ligand of [0016]] on page 2, and the R<sup>3</sup> and R<sup>4</sup> groups are bonded together to form the simplest ring such as a fused benzene ring with substituent(s), Schulte's heteroatom containing metallocene complexes meet the limitations of organometallic transition metal compound (I) of the instant claims.

Thus, it would have been obvious to a skilled artisan at the time the invention was made to employ Schulte's teaching to provide an olefin polymerization catalyst composition comprising the heteroatom containing metallocene complex as shown above in search for a catalyst composition with improved stereo selectivities and activities since such is disclosed in Schulte and in the absence of any showing criticality and unexpected results.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Caixia Lu whose telephone number is (571) 272-1106. The examiner can normally be reached on 9:00 a.m. to 5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Caixia Lu/  
Caixia Lu  
Primary Examiner  
Art Unit 1796